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February 19, 2025

Senate
South Dakota
Senate State Affairs Committee
The Honorable, Jim Mehlhaff, Chair
The Honorable, Carl Perry, Vice Chair

Dear Members of the Committee:

Public Citizen submits this testimony in strong support of SB 164.

On behalf of our over 1,000 members and activists in South Dakota, Public Citizen encourages the Senate State Affairs to advance SB 164, a legislative proposal regulating deepfakes in election communications. Deepfakes are fabricated content (videos, images, or audio) created with the use of generative artificial intelligence (A.I.) that depict a person saying or doing things that they never actually said or did in real life. In an election context, a deceptive and fraudulent deepfake is synthetic media that depicts a candidate or political party with the intent to injure the reputation of the candidate or party or otherwise deceive a voter.

Recent advances in the realm of A.I. have made it such that tools needed to create deepfakes are now widely accessible. Meanwhile, the quality of deepfake technology is improving rapidly, making it harder for the average person to detect a deepfake. Audio deepfakes are already of extremely high quality and video deepfakes can easily convince a casual viewer. In the months ahead, this problem will grow much worse, with technologists expressing concern that soon they will also not be able to identify what is real content versus a deepfake.

The rapid advances in deepfake technology have deeply concerning implications for the elections in the United States. In 2024 we saw deepfakes being used around the world in attempts to undermine elections. Just two days before Slovakia's 2024 elections, an audio deepfake was disseminated on social media. The deepfake fraudulently represented a party leader discussing ways to rig the election¹. It is believed that this deepfake influenced the outcome of the Slovakian election. There was also rampant use of deepfakes in recent major elections in many other countries including Argentina, Turkey, the UK, Moldova, Bangladesh,

¹ Meaker, M. (2023, March 10). Slovakia's Election Deepfakes Show AI Is a Danger to Democracy. Retrieved from Wired: <https://www.wired.co.uk/article/slovakia-election-deepfakes>

and Indonesia^{2,3,4,5,6}. Candidates from both sides created deepfakes of both themselves and their opponents in order to enrich their own reputations and harm those of their opponents.

We saw the use of deepfakes in the United States elections as well last year. Voters in New Hampshire received a robocall from an A.I.- generated audio deepfake of President Joe Biden⁷. The Deepfake had President Biden encouraging voters to not vote in the Presidential Primary Election. Governor Ron DeSantis's presidential campaign disseminated deepfake images of former President Donald Trump hugging Dr. Anthony Fauci, which never happened⁸. A PAC circulated a deepfake of North Carolina candidate for Congress, former Representative Mark Walker, in which he purportedly said that he was "not qualified for the job in Congress"⁹.

Deepfake technology poses a major threat to our democracy and our elections. It is not hard to envision a nightmare scenario where a well-timed fraudulent deepfake swings the outcome of an election.

The rapid development of deepfake technology also threatens to weaken social trust. As deepfakes become more common, it will become more difficult for people to determine what is real and what is fabricated content. Additionally, it will become easier for bad actors to refute

² Nicas, J., & Cholakian Herrera, L. (2023, November 15). Is Argentina the First A.I. Election? Retrieved from The New York Times:
<https://www.nytimes.com/2023/11/15/world/americas/argentina-election-ai-milei-massa.html?smid=nytcor-e-ios-share&referringSource=articleShare>

³ Wilks, A. (2023, May 25). Turkey Elections: Deepfakes, disinformation 'misdirect' voters ahead of runoff. Retrieved from Al-Monitor:
<https://www.al-monitor.com/originals/2023/05/turkey-elections-deepfakes-disinformation-misdirect-voters-ahead-runoff>

⁴ Verma, P., & Zakrzewski C. (2024, April 23). AI deepfakes threaten to upend global elections. No one can stop them. Retrieved from The Washington Post:
<https://www.washingtonpost.com/technology/2024/04/23/ai-deepfake-election-2024-us-india/>

⁵ De Nadal, L., & Jančárik, P. (2024, August 22). Beyond the deepfake hype: AI, democracy, and "the Slovak case". Retrieved from the Harvard Kennedy School Misinformation Review:
<https://misinforeview.hks.harvard.edu/article/beyond-the-deepfake-hype-ai-democracy-and-the-slovak-case/>

⁶ Bond, S. (2024, December 21). How AI deepfakes polluted elections in 2024. Retrieved from National Public Radio:
<https://www.npr.org/2024/12/21/nx-s1-5220301/deepfakes-memes-artificial-intelligence-elections>

⁷ Seitz-Wald, A., & Memoli, M. (2024, January 22). Fake Joe Biden robocall tells New Hampshire Democrats not to vote Tuesday. Retrieved from NBC News:
<https://www.nbcnews.com/politics/2024-election/fake-joe-biden-robocall-tells-new-hampshire-democrats-not-vote-tuesday-rcna134984>

⁸ Nehamas, N. (2023, June 8). DeSantis Campaign Uses Apparently Fake Images to Attack Trump on Twitter. Retrieved from The New York Times:
<https://www.nytimes.com/2023/06/08/us/politics/desantis-deepfakes-trump-fauci.html?auth=login-google1t&login=google1tap>

⁹ Mikkelsen, E. (2024, March 1). North Carolina 6th District candidate Mark Walker calls video shared by PAC a 'deepfake'. Retrieved from Fox News:
<https://myfox8.com/news/politics/your-local-election-hq/north-carolina-6th-district-candidate-mark-walker-calls-video-shared-by-pac-a-deepfake/>

real visual or audio evidence of their bad behavior, by claiming it is a deepfake. All of this will serve to undermine public trust in news, information, and our elections.

Deepfakes pose very real and present threats to our democracy. New legislation like SB 164, which regulates the use of deepfakes in election communications, is critical.

Texas, Minnesota, California, Washington, and 17 other states have already passed legislation regulating the use of deepfakes in elections, and 48 states and D.C. have introduced legislation on this issue across the country¹⁰. This legislation has had broad bipartisan support - with Republicans and Democrats alike introducing these bills to regulate political deepfakes in states across the country. This legislation is also overwhelmingly popular among voters. In a survey conducted by Data for Progress, 80% of voters expressed their concerns with the use of deepfakes of candidates in the upcoming election¹¹.

Public Citizen strongly urges the Senate State Affairs to move SB 164 forward in order to put in place much needed regulations to protect the voters, our elections, and our democracy from the harms of deepfakes.

Thank you again for the opportunity to testify in support of SB 164. I am happy to answer any questions.

Respectfully Submitted,
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¹⁰ Public Citizen. (2023, November 20). Tracker: State Legislation on Deepfakes in Elections. Retrieved from Public Citizen: <https://www.citizen.org/article/tracker-legislation-on-deepfakes-in-elections/>

¹¹ Fairclough II, T., & Blank, L. (2024, February 8). Voters overwhelmingly believe in regulating deepfakes and the use of Artificial Intelligence. Retrieved from Data For Progress: <https://www.dataforprogress.org/blog/2024/2/8/voters-overwhelmingly-believe-in-regulating-deepfakes-and-the-use-of-artificial-intelligence>